

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

KENNETH McDANIEL,)	CV 06-22-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA,)	
)	
Defendant.)	
_____)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on June 20, 2006. State of Montana did not file objections and is therefore not entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

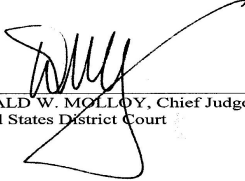
The State removed the case to this Court by notice filed February 10, 2006. The State claims removal is appropriate under 28 U.S.C. § 1441(b), because the Complaint appears to allege a

civil rights claim cognizable under 42 U.S.C. § 1983, and therefore is within the original jurisdiction of this Court. 28 U.S.C. § 1331.

Plaintiff has timely filed a motion pursuant to 28 U.S.C. § 1447 requesting the case be remanded to state court. The State opposes remand. Judge Lynch concluded that the removal was not proper because this Court, contrary to the suggestion of the State, does not possess original jurisdiction over the subject matter of the controversy. The Plaintiff's motion should be granted, and the case remanded to the Montana Eleventh Judicial District court, Flathead County.

I find no clear error in Judge Lynch's Findings and Recommendation (dkt #6) and I adopt them in full. Plaintiff's Motion for Remand (dkt #4) is GRANTED.

DATED this 9th day of August, 2006.



DONALD W. MOLLOY, Chief Judge
United States District Court